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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/578,567	12/15/2006	Olaf Meyer	290889US6PCT	9063
22850	7590	08/13/2009	EXAMINER	
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, L.L.P. 1940 DUKE STREET ALEXANDRIA, VA 22314			LAWSON, MATTHEW JAMES	
			ART UNIT	PAPER NUMBER
			3775	
			NOTIFICATION DATE	DELIVERY MODE
			08/13/2009	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentdocket@oblon.com  
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jgardner@oblon.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/578,567	<b>Applicant(s)</b> MEYER ET AL.	
	<b>Examiner</b> MATTHEW LAWSON	<b>Art Unit</b> 3775	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 04 June 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 12 and 15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
3. Claims 12 and 15 recites the limitation "the screw holes" in lines 3, and 2 respectively. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-15, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Busch et al. (DE 203 09 361 U1) in view of Sommerkamp (US 5,197,966).

Busch et al. disclose a plate for stabilizing distal radius fractures comprising a longitudinal shaft (see figure below) and a triangular/y-shaped plate part (see figure below) including a distal section (see figure below) and first (see figure below) and second (see figure below) transverse surface sections that each extend from respective ends of the distal section of the longitudinal shaft, wherein an interior surface of each of

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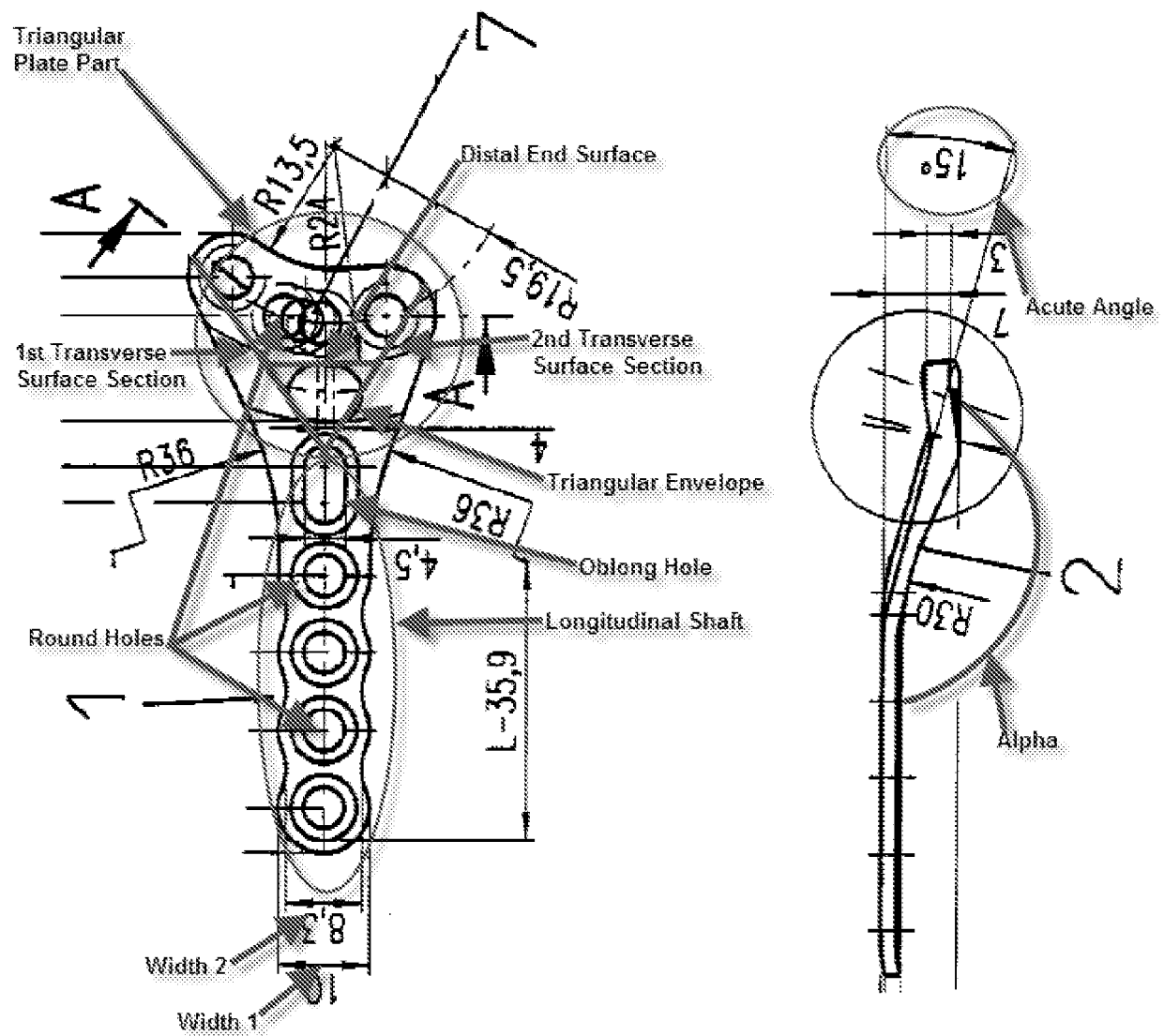
the distal section (see figure below), the first transverse section (see figure below), and second transverse section define a triangular envelope (the differential surface of the lines extending from the specific point tangent to the interior surface, see figure below), and an arc shape of the distal ends of the first and second transverse surface sections (figure 4-5) wherein rounds holes (see figure below) are arranged in both the shaft and the distal section, the round holes including a conical threaded bores (figures 4-5) with axes extending in a predominately non-parallel manner in the distal section (figures 4-5), wherein a bend is disposed between the shaft and the triangular plate part (figures 3-5), wherein the triangular shape of the plate part is scalene (figure 5), wherein an angle (alpha, see figure below) is an angle between the longitudinal axes of the plurality of the conical threaded bores in the triangular plate part and a bottom surface of the longitudinal shaft, the angle, alpha, (see figure below) is a non-ninety degree angle (see figure below). The plate further comprising an oblong hole (see figure below) disposed in the shaft and wherein the cross-sectional area of the shaft comprises a vault (see figure below) wherein the corner surfaces of the triangular plate part are a non-planar curved surface (figures 4-5) and the threaded bores on the distal section approximately extend in a circular arc (figures 4-5), and the distal ends of the first and second transverse surface sections each comprise at least two threaded bores (see figure below) and the first transverse surface section has a different length than the second transverse section (see figure below). The longitudinal shaft further includes two different widths (see figure below), the bend disposed between the shaft and the triangular plate part include an acute angle between a bottom surface of the triangular

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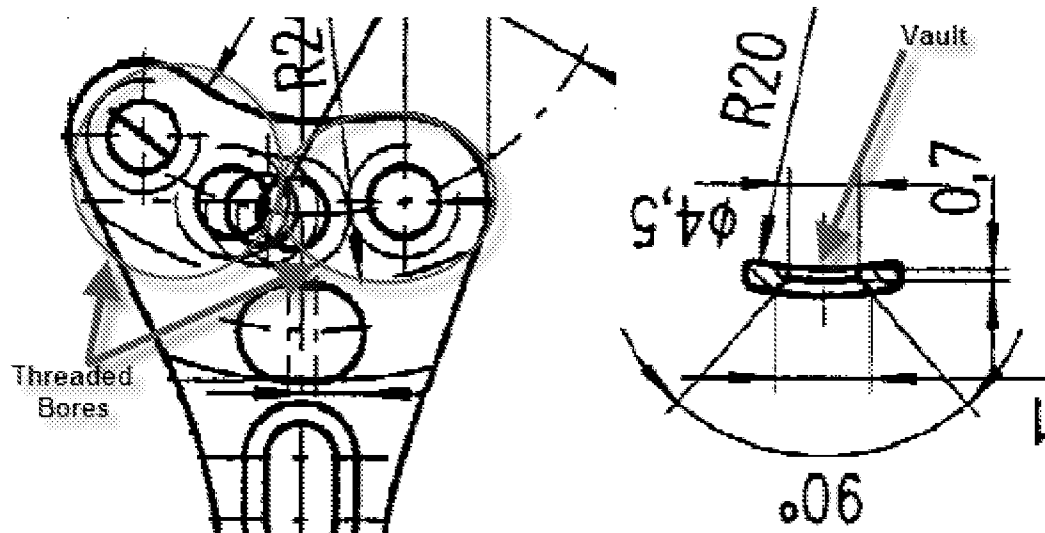
plate part and a plane that extends from a bottom surface of the longitudinal shaft towards the triangular plate part (see figure below). Busch et al. do not disclose the bore diameter of the round holes of the distal section is smaller than a diameter of the round holes of the longitudinal shaft.

Sommerkamp discloses a bore diameter of the round holes of the distal section (36, 38, 40, 42, 44, 46, 48, figure 4, column 4, lines 50-61) is smaller than a diameter of the round holes (24, 28, figure 4, column 4, lines 32-49) to house different sized/diameter screws; the smaller diameter screws being inserted into the fragmented bone (column 4, lines 32-61 and column 5, lines 43-52). Accordingly it would have been obvious to one of ordinary skill in the art at the time the invention was made to have constructed the device of Busch et al. to have a smaller sized bore diameter in the distal portion round holes than the longitudinal shaft to house different sized/diameter screws; the smaller diameter screws being inserted into the fragmented bone.

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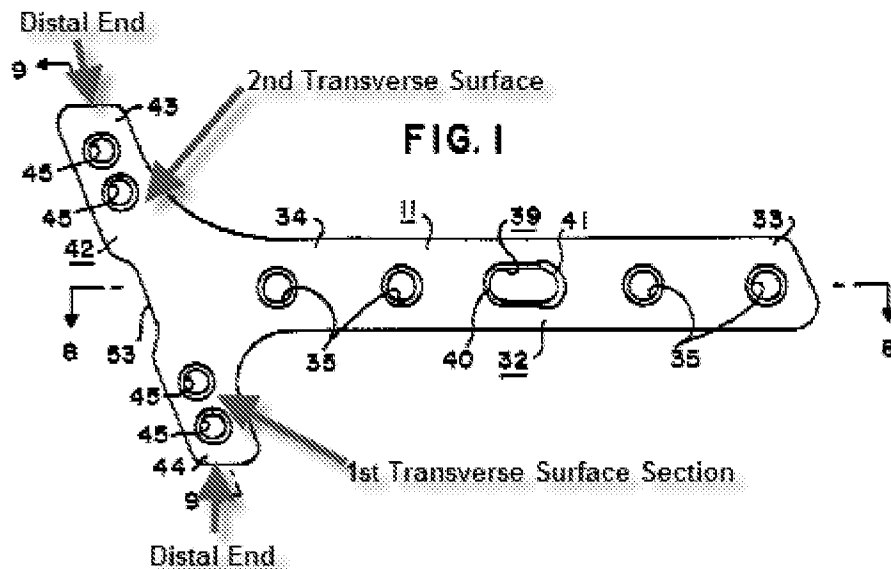
6. Claims 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Busch et al. (DE 203 09 361 U1) in view of Sommerkamp (US 5,197,966) in further view of Grusin et al. (US 6,283,969).

Busch et al. in view of Sommerkamp disclose the claimed invention except for the first and second transverse sections are dimension such that the tuberculum listeri fits between the distal ends of the first and second transverse surface sections.

Grusin et al. discloses the first an second transverse sections being dimension such that the tuberculum listeri fits between the distal ends of the first and second transverse surface sections (figures 1-25, column 5, lines 62-67 and column 6, lines 1-40) to permit retention of the tuberculum listeri instead of removal (column 9, lines 57-67, column 7, lines 1-31 and column 5, lines 62-67, column 6, lines 1-40). Accordingly it would have been obvious to one of ordinary skill in the art at the time the invention was made to have dimensioned the first and second transverse sections of Busch et al. in view of Sommerkamp such that tuberculum listeri fits between the distal ends of the first

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and second transverse surface sections to permit retention of the tuberculum listeri instead of removal as taught by Grusin et al.



### *Response to Arguments*

7. Applicant's arguments with respect to claims 1-18 have been considered but are moot in view of the new ground(s) of rejection.

### *Conclusion*

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the



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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MATTHEW LAWSON whose telephone number is (571)270-7375. The examiner can normally be reached on M-F, 8am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Barrett can be reached on 571-272-4746. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/M. L./  
Examiner, Art Unit 3775

/Thomas C. Barrett/  
Supervisory Patent Examiner, Art  
Unit 3775

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